

**OCT 14 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON  
U.S. COURT OF APPEALS**

MARTIN MASON,

Plaintiff - Appellant,

v.

EQUITABLE; et al.,

Defendants,

and,

BUSINESS MEN'S ASSURANCE  
COMPANY OF AMERICA,

Defendant - Appellee.

No. 02-56384

D.C. No. CV-99-08883-NMM

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Nora M. Manella, District Judge, Presiding

Submitted October 9, 2003\*\*  
Pasadena, California

---

\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: BRUNETTI, T.G. NELSON, and SILVERMAN, Circuit Judges.

Appellant, Martin Mason, appeals the district court's granting of summary judgment in favor of Business Men's Assurance Company of America (BMA).

We have jurisdiction pursuant to 28 U.S.C. § 1291, and affirm the district court's ruling.

In the previous appeal in this case, we held that the district court properly reviewed the determination of the plan administrator for an abuse of discretion. *Mason v. Equitable*, 32 Fed.Appx. 289, 291 (9th Cir. 2002). That is the law of the case and we decline the invitation to re-visit that decision. *See Hegler v. Borg*, 50 F.3d 1472, 1475 (9th Cir. 1995), *cert. denied*, 516 U.S. 1029 (1995).

We also concluded previously, under effectively identical policy language and evidence submitted, that Equitable's denial of Mason's claim for total disability benefits was not an abuse of discretion. We held, "We agree with the district court's conclusion that even assuming some exposure to some chemicals may be necessary to perform his occupation, Mason provided no competent admissible medical evidence that the type of chemicals he would be exposed to pose any greater risk of causing cancer or its recurrence in him than such exposure would in the population at large. The district court acted within its discretion in

rejecting the report from Dr. Brautbar and the medical opinion of Dr. Neustein on the basis of their lack of reliability and relevancy. . . .” *Mason* at 292. Because we held that the *previously* submitted medical evidence lacked reliability and relevancy pursuant to *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and because no *additional* relevant evidence was presented as against BMA, summary judgment for BMA was properly granted.

AFFIRMED